

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY ESCARDILLE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 02-2930
JO ANNE B. BARNHART,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

Giles, C.J.

June 24, 2003

MEMORANDUM

Anthony Escardille brings this action under 42 U.S.C. § 405(g) and 1383(c), seeking reversal of the final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s claim for social security benefits (“SSI”) and disability insurance benefits (“DIB”) under Title II of the Social Security Act (“Act”). Plaintiff and defendant have each filed a Motion for Summary Judgment. For the reasons that follow, including that the ALJ failed to explain if she gave consideration to the treating physician’s report, that the siblings’ testimony was unreasonably found to be not credible, and that unreasonable reliance was given to plaintiff’s testimony, both motions are denied and the matter is remanded to the Commissioner for a new hearing.

Procedural History

Plaintiff protectively filed applications for DIB and SSI on January 14, 1994. (R. 35-42.) His applications were initially denied on March 23, 1994. (R. 43-48.) Plaintiff requested reconsideration on April 11, 1994 (R. 49-50), and his claims were denied again on June 7, 1994

(R. 51-56.) Plaintiff then filed his request for a hearing on September 2, 1994. (R. 57.)

On November 4, 1994, Administrative Law Judge (“ALJ”) Suanne Strauss dismissed plaintiff’s request for review as untimely filed. (R. 257-59.) Plaintiff requested review of the ALJ’s dismissal order on January 7, 1995, showing the Appeals Council that his attorney had never been sent a copy of the reconsideration denial notice as required by the regulations. (R. 260-61, 362-64.) On February 2, 1995, the Appeals Council vacated the dismissal order and remanded the case to the ALJ for a hearing on the merits of plaintiff’s claims. (R. 127-29.)

On May 15, 1995, the ALJ convened the first administrative hearing in this matter. (R. 276-352.) On January 20, 1996, the ALJ issued a decision denying plaintiff’s claim. (R. 262-75.) Plaintiff timely filed a request for review of the ALJ’s decision on January 29, 1996. (R. 353-54.) Following plaintiff’s memorandum in support of the request for review (R. 355-61), the Appeals Council vacated the ALJ’s first decision for failure to allow the attorney to question the vocational expert and remanded it for a new hearing. (R. 365-67.)

On August 25, 1998, the same ALJ convened a second administrative hearing. (R. 405-42.) On November 16, 1998, the ALJ issued a second decision denying plaintiff’s claims. (R. 11-29.) Plaintiff again filed for reconsideration. Over three years later, on April 12, 2002, the Appeals Council denied plaintiff’s request for review. (R. 7-8.) On May 12, 2002, Plaintiff commenced the instant action pursuant to 42 U.S.C. § 405(g), and now moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

Factual History

Plaintiff was born in 1962. He does not have any physical impairment except poor dental hygiene. It is undisputed that he has some mental impairments, though the extent to which he is

affected by these impairments is contested. The ALJ found that he suffered from anti-social personality disorder, passive-aggressive personality disorder, dependent personality disorder, and situational depression. (R. 269.) Plaintiff exhibits extreme immaturity in his comprehension of social situations. (R. 124, 136, 161.) His treating physician stated that he understands the difference between right and wrong but is not socially mature enough to care. (R. 164-65.) This opinion is consistent with the record, including plaintiff's past history, testing, and diagnoses, and translates to an individual whose psychiatric basis for lying fits into a category of persons who understands right from wrong, but has compulsions to do wrong and to misrepresent his own responsibility when confronting the consequences of his actions. When viewing the record as a whole, it is apparent that plaintiff consistently misrepresented his actions to his family, to medical and psychiatric examiners, and even to the ALJ. (See, e.g., R. 124, 393-94, 416, 428-29, compare R. 250, with R. 314.) Intelligence testing of plaintiff indicated a borderline to low average intelligence range, with an IQ at or around 81. (R. 124, 251.)

He was born prematurely, and had delayed development as a child. (R. 123, 140.) A review of plaintiff's educational records indicates that he had academic and social difficulties from the time that he was very young. (R. 123.) Plaintiff was held in kindergarten for three years before being placed into special education for the remainder of his schooling. (R. 123.) When he was nine years old, plaintiff was diagnosed by the school psychologist, Dr. Paclisanu, as being emotionally disturbed, and it was recommended that he receive psychotherapy. (R. 145.) After three years in special education, plaintiff was not progressing sufficiently, and more evaluation was recommended. (R. 143.) It was noted that he did not pay attention, that he played on a very immature level, and that he was often physically and verbally aggressive. (R.

140.) At ten years old he was still wetting his bed and having episodes of “occasional encopresis¹ if not reminded to go to the bathroom.” (R. 140.) The school social worker noted that these accidents did not seem to embarrass plaintiff. (R. 143.)

At age fifteen, plaintiff continued to have academic and social difficulties. (R. 136.) School psychologist, Donna Hegstrom, placed his maturity level at that of a ten-year-old, stating that he had poor concentration, difficulty following through on a thought process, and that his peer relationships were poor. (R. 136.) While she noted that his academic skills were improving, her testing showed that his lowest score was in social judgment. (R. 137.) She found that plaintiff was hesitant on the social decision questions, which indicated emotional problems. (R. 137.) Other tests further indicated that plaintiff possessed immature thinking and poor self-image. (R. 138.) Dr. Hegstrom found that he saw himself as threatened and often ignored. (R. 138.)

Plaintiff was graduated from high school in 1982, despite a fifth grade level of spelling, a seventh grade level of arithmetic, and a tenth grade level of reading. (R. 124, 249.) After graduation he attended a year of vocational training where he learned to assemble florescent light fixtures. (R. 66, 249.) He thereafter held a variety of skilled jobs, including work as a dishwasher and a grocery bagger. (R. 243.) His longest job lasted for five years, though in several positions he only remained for a several months. (R. 243.) At least three of these jobs were lost as a result of plaintiff’s stealing. (R. 290, 292, 295.)

¹ Encopresis is “the voluntary or involuntary passage of stools causing soiling of clothes by a child over 4 years of age.” See U.S. National Library of Medicine, Medical Encyclopedia, at <http://www.nlm.nih.gov/medlineplus/ency/article/001570.htm> (last updated Dec. 10, 2001). This condition typically results from an accumulation of fecal matter in the large intestine, which causes it to become misshapen and to “leak” stool out of the system. Id. It can also be related to a lack of toilet training or an emotional disturbance. Id.

Plaintiff's family, concerned with his alleged stealing and lying, requested that he receive medical or mental assistance. (R. 164.) Plaintiff's siblings also reported problems with him masturbating inappropriately, meaning in public settings. (R. 164, 324.) In August 1990, plaintiff went to Penndel Medical Center ("Penndel") for support. He was evaluated by Edward Biuckians, M.D., psychiatrist. (R. 164.) At that time, plaintiff's mother had recently passed away and plaintiff was living with his sister. (R. 165.) Plaintiff was working as a grocery clerk and reported that he liked the job, and denied being depressed or anxious. (R. 164.) Dr. Biuckians diagnosed plaintiff with antisocial personality disorder² and passive-aggressive personality disorder.³ Dr. Biuckians reported that plaintiff was bright enough to know the difference between right and wrong, but not socially mature enough to care. (R. 164-65.) Despite his knowledge that plaintiff was employed at the time of evaluation, Dr. Biuckians assigned plaintiff a functioning level of 50 on a 100 point Global Assessment of Functioning ("GAF") scale (R. 165), a finding that indicated he was unable to perform competitive work on a sustained basis. According to the DSM-IV, a GAF score of 50 indicates a serious impairment in social and occupational functioning. (Diagnostic and statistical Manual of Mental Disorders, (DSM-IV) 34 (4th ed. 2000)). Following this evaluation, plaintiff attended group therapy for over a year. (R.166-78.) Plaintiff states that he continued treatment until 1993, when he stated that he could no longer attend due to financial reasons. (R. 159) However, the medical records only

² Antisocial personality disorder is a pervasive pattern for, and violation of, the right of others that begins in childhood or early adolescence and continues to adulthood. Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) 701 (4th ed. 2000).

³ Passive-aggressive personality disorder is a pervasive pattern of negativistic attitudes and passive resistance to demands for adequate performance in social and occupational situations that begins by early adulthood. DSM-IV at 789.

indicate treatment through November 1991. (R. 166-78.)

In September 1992, an attorney at the Office of the Public Defender requested a psychological evaluation of plaintiff. (R. 123.) The record does not indicate what charge plaintiff was defending against to prompt the request, though around that time period he was arrested for having broken into numerous parked cars to obtain loose change.⁴ (R. 123.) Dr. Glen Johnston, a psychologist, reported that plaintiff had undergone intelligence testing that showed plaintiff functioned in the borderline to low average range of intelligence. (R. 124.) The testing also revealed poor abstract thinking skills, which were most pronounced in social functioning. (R. 124.) Dr. Johnston reported that plaintiff was immature in relationships, having difficulty appreciating the point of view of others and even the long term effects of his own behavior. (R. 124.) It was noted that plaintiff had recently lost three jobs as a result of petty thievery. (R. 124.) Plaintiff often collected and hoarded objects, stashing them in his room. (R. 124.) Dr. Johnston concluded that plaintiff could not work in a competitive work environment in that he recommended placement in a training program or a specialized supervised work environment. (R. 125.)

While plaintiff claimed at the hearing before the ALJ that this was his only arrest (R. 299), the record reveals that he was also arrested in 1995 for loitering and prowling at night, criminal attempt, and criminal mischief (R.191). The record does not show the disposition of this arrest.

On September 21, 1994, plaintiff again sought treatment at Penndel because “his sister [was] concerned about him, his feelings and his problems securing and keeping a job.” (R. 159.)

⁴ Plaintiff admitted that he had taken money from as many as one hundred cars in this manner. (R. 314.)

Plaintiff states that he usually just complied with what his family told him to do without question. (R. 160.) At intake, plaintiff's doctors confirmed earlier psychological diagnoses and stated that he was socially immature, had poor insight and judgment, and expressed no concern for others. (R. 161.)

On April 1, 1995, Ronald Fischman, Ed.D., of the Pennsylvania Bureau of Disability Determinations, conducted a clinical psychological and intellectual evaluation of plaintiff in order to determine his eligibility for SSI. (R. 249.) Dr. Fischman concluded that plaintiff was functioning on the low average range of intellectual ability, that he suffered residual effects of an attention deficit disorder,⁵ and that he had a possible mild adjustment disorder with mixed emotional features.⁶ (R. 252.) Dr. Fischman further indicated that plaintiff was in the low average range of intellectual ability, assigning an IQ of 82. (R. 251.) A review of the record indicates that plaintiff lied to Dr. Fischman during the evaluation, stating that he had not stolen from parked cars. (R. 250.) Later, he testified, admitting such thievery. (R. 314.) Dr. Fischman did not find that plaintiff was able to work in a competitive environment. To the contrary, he recommended that should plaintiff become eligible for benefits that his sister should manage the funds, demonstrating his belief that plaintiff was unable to independently care for his finances. (R. 252.) Dr. Fischman also opined that plaintiff could benefit from assistance from the Office of Vocational Rehabilitation to assist him in obtaining and maintaining a job, indicating his

⁵ Attention-Deficit Disorder is a persistent pattern of inattention and/or hyperactivity-impulsivity that is more frequently displayed and more severe than is typically observed in individuals at comparable levels of development. Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) 85 (4th ed. 2000).

⁶ Adjustment Disorder is "the development of emotional or behavioral symptoms [develop] in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s)." DSM-IV at 683. Generally, the symptoms do not last in excess of six months. Id.

belief that plaintiff might not independently be capable of obtaining and retaining employment. (R. 253.)

On May 15, 1995, plaintiff's first administrative hearing was held. (R. 276.) Plaintiff testified and detailed his work history. Though he explained that he had lost several jobs because he had been accused of stealing, he did not admit to any wrongdoing. (R. 293-99.) However, even though plaintiff claimed he had not stolen, he also testified that during this time period he was attending group therapy specifically to address his kleptomania. (R. 298-99.) When asked why he was no longer working, he told the ALJ that his siblings had told him that he could not work until his SSI determination was completed. (R. 296-97.) He asserted that if he were permitted by his family to work, he would be able to work again. (R. 297.) Plaintiff testified that his kleptomania had "stopped" and that he had not stolen in several years, though he could not specifically explain when he stopped stealing or what had ended the problem. (R. 300-01.) When asked about his daily activities, plaintiff explained that he helped with the household chores (R. 303), and that he spent every afternoon gathering golf balls from a local course and reselling them to golfers (R. 304.)

Plaintiff's sister, Michelle Escardille, also testified at the hearing. (R. 316.) Ms. Escardille was residing with plaintiff and when asked about his daily life she informed the ALJ that plaintiff did not shower, brush his teeth, change his clothes, or perform any household tasks without prompting from her. (R. 317.) She further explained that he defecated on himself approximately once a week. (R. 317.) Ms. Escardille believed that he had stolen in the incidents he was accused of by his employers, and informed the ALJ that plaintiff stole money from her when she left it laying around the home. (R. 317-18.) She believed that he was still stealing

small items, stating that his room was replete with balls, dead lighters, and keys, and that on occasion he would leave the house in the middle of the night, and that she believed he was going through parked cars looking for change again. (R. 318-19.)

At the hearing Herman Rudnick, a psychologist, testified concerning plaintiff's situation. (R. 325-50.) Dr. Rudnick had never personally interviewed or examined plaintiff, and made his analyses on the record and his observations of plaintiff and his siblings while testifying at the hearing. (R. 326.) Dr. Rudnick concluded that plaintiff had a personality disorder, as evidenced by his social immaturity. (R. 326.) He opined that plaintiff had a GAF between 60 and 70 (R. 344), and that there was not "anything psychological" that would prevent him from being employed (R. 349). It is unclear how Dr. Rudnick reached such a GAF number, having never personally questioned plaintiff and deriving the number in the middle of the hearing.

The hearing concluded with the ALJ finding that plaintiff was able to perform his past work as a dishwasher. (R. 350.) Plaintiff's attorney asked for the opportunity to question the Vocational Expert, who was present at the hearing. (R. 350.) The ALJ denied this request, stating that, in light of her findings, such testimony was unnecessary and was not permitted. When plaintiff's attorney mentioned that this denial might create problems on appeal, the ALJ stated, "Send [the Appeals Council] a stamp[ed], self addressed envelope, Mr. Levanthal. I don't think I need any vocational testimony and I'm the Judge." (R. 350.) On May 18, 1998, the Appeals Council vacated the ALJ's decision, in part, for failure to permit questions to be asked of the vocational expert. (R. 366.)

On August 22, 1998, in anticipation of plaintiff's second hearing, his attorney referred him to Craig Weiss, Ph.D., for an evaluation. (R. 390-95.) Dr. Weiss concluded that as a result

of plaintiff's personality disorder, learning disability, and below average intelligence, plaintiff met the criteria for disability as defined by the Social Security Act. (R. 395.) Dr. Weiss noted that plaintiff argued with family members and that he had no friends. (R. 395.) He further opined that plaintiff could not complete tasks unless constantly supervised. (R. 395.) Plaintiff required assistance to adequately care for his personal grooming, daily living, and finances. (R. 394.) Further, Dr. Weiss found that plaintiff repeatedly experienced episodes of deterioration or decompensation in work-like settings, which resulted in him withdrawing from the situation and prevented him from sustaining permanent employment. (R. 395.)

A second administrative hearing was held on August 25, 1998. (R. 405.) Plaintiff testified that his daily life was approximately the same as at the first hearing, that he lived with siblings and had no responsibilities except for the chores that he was assigned. (R. 410-13.) Plaintiff's sister, Maria-Luisa Escardille, with whom he resided during the week, testified that plaintiff was still having difficulty consistently brushing his teeth, and that on occasion he still defecated inappropriately. (R. 415.) She reported that he still was lying and stealing frequently, and that she put bells on the doors in the house so that she could hear when he came in and out of rooms. (R.416-20.) Plaintiff's brother, Tony Escardille, with whom plaintiff resided with on weekends, confirmed much of this testimony. (R. 423-25.) Mr. Escardille emphasized that plaintiff would not complete any responsibilities or chores without constant supervision. (R.423-25.) When asked to complete a task, plaintiff often lied to him, saying that something was done even when it was not. (R. 423-26.) Mr. Escardille also testified that on numerous occasions plaintiff soiled himself and then hid his underwear, and that his wife later found the soiled underwear between the windows or in other "unusual places." (R. 428.) He also cited incidents

where plaintiff lied or stole from him. (R. 430-32.) Mr. Escardille discussed plaintiff's previous employment, explaining that his mother had convinced his employers to discuss problems with her. (R. 433.) He testified that his mother ensured that plaintiff went to work, and then personally handled any problems that arose on the job. (R. 433-34.)

Ms. Rutherford, the Vocational Expert, was the final witness at the second hearing. (R. 437.) In response to several hypothetical questions presented by plaintiff's counsel, she opined that plaintiff would not be able to maintain competitive work in the national economy. (R. 438.) She emphasized that if an individual needs constant supervision he cannot maintain employment, since even unskilled laborers with repetitive tasks are not given continual supervision. (R. 439.) She opined that Dr. Fischman's recommendation to place plaintiff in OVR demonstrated his belief that plaintiff could not directly enter competitive employment, as OVR does not work with individuals who are capable of such. (R. 440.) The ALJ did not ask any questions.

Standard of Review

When a district court reviews the decision of the Commissioner, review is limited to the Commissioner's final decision. 42 U.S.C. § 405(g). If the Commissioner's decision is supported by substantial evidence the decision must be upheld, even if this court would have reached a different conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971). Substantial evidence has been defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938). In this context, substantial evidence is more than a mere scintilla, but may be somewhat less than a preponderance of the evidence. Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir. 1971).

I. Dr. Biuckians

Plaintiff argues that the opinion of his treating physician, Dr. Biuckians, was inappropriately dismissed. It is well-established that the third circuit requires the treating physician's opinion to receive great weight and consideration. See, e.g., Gilliland v. Heckler, 786 F.2d 178, 183 (3d Cir. 1986); Wallace v. Sec'y of Health and Human Svcs., 722 F.2d 1150, 1155 (3d Cir. 1983); Smith v. Sullivan, 720 F. Supp. 62, 64 (E.D. Pa. 1989). A finding of residual capacity for work which conflicts with a treating physician's opinion and is made without analytical comment or record reference to the contradictory evidence is not supported by substantial evidence. Gilliland, 786 F.2d at 183.

Dr. Biuckians, who worked with plaintiff at Penndel Mental Health Center for several years, opined that plaintiff had a functioning level of 50 on a 100 point Global Assessment of Functioning ("GAF") scale, and that he is unable to perform competitive work on a sustained basis. According to the DSM-IV, a GAF score of 50 indicates a serious impairment in social and occupational functioning. The ALJ did not address this information in making her findings. In her first denial, the ALJ summarized Dr. Biuckians's diagnoses; however, she did not mention the GAF score or its meaning regarding plaintiff's ability to maintain employment. After finding that plaintiff suffered from a severe impairment, the ALJ stated in a single sentence, "The claimant can perform his past relevant work as a dishwasher or grocery clerk." (R. 270, see also R. 24.) However, that conclusion is contrary to a GAF score of 50. It is not enough to say that because plaintiff did those jobs for a time that he could perform and maintain competitive employment. Not only did plaintiff fail to keep these job, but the unrebutted evidence is that his mother intervened with the employers to enable him to work as long as he did. (R. 433.) By denying benefits the ALJ necessarily rejected Dr. Biuckians's findings. The ALJ decision is void

of any reasoning or justification for rejecting the treating physician's opinion.

Failure to provide such an explanation for non-consideration or rejection of a treating physician's opinion is contrary to third circuit precedent and requires reversal or remand. See Burnett v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 121 (3d Cir. 2000) (the ALJ "must give some indication of the evidence which he rejects and his reason(s) for discounting such evidence"); Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999) ("the ALJ must consider all the evidence and give some reason for discounting the evidence she rejects"); Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 433 (3d Cir. 1999) ("the ALJ must indicate in his decision which evidence he has rejected and which he is relying on as the basis for his finding"); Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981) ("[i]n the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored").

Dr. Biuckians's report and opinion was contrary to the ALJ's findings. The GAF score constituted a specific medical finding that plaintiff was unable to perform competitive work. There was no contrary medical evidence credited by the ALJ. Since the ALJ entirely failed to evaluate Dr. Biuckians's report, the ALJ's determination is not supported by substantial evidence. The determination is remanded to the ALJ so that Dr. Biuckians's report and opinion are considered with the rest of the record.

II. Siblings' credibility

At the hearings plaintiff's sisters, Michelle and Maria-Luisa Escardille, and his brother, Tony Escardille corroborated each other, each testifying that plaintiff could not care for himself. Each stated that plaintiff did not care for his personal hygiene, often failing to shower or brush his teeth, and had episodes of defecation in various areas of their houses. Plaintiff was said to

have had trouble completing chores around the house and that he needed almost constant supervision. All siblings reported problems with plaintiff's lying and stealing.

Following the first hearing, the ALJ found that Michelle Escardille's testimony was not credible because it was "both unreliable and self-serving as she has a clear vested interest in the [plaintiff] not working so that he can obtain social security benefits which she would control and use, much like what she has done with his house and welfare benefits." (R. 268.) This reasoning was reiterated with regard to the testimony of all the siblings following the second hearing, where the ALJ stated that, "the siblings have a financial incentive in assisting the [plaintiff] with his claim." (R. 20.) The ALJ further found that plaintiff's siblings take his welfare benefits and refuse to give him spending money. (R. 20.)

In making such findings, the ALJ implied without any factual foundation that the siblings were converting plaintiff's monies inappropriately in managing his funds. To the contrary, the record shows that plaintiff has never been able to manage his daily life needs or his finances independently. His mother who cared for him in her home until she died left him the house to ensure that he would have a place to live, indicating his difficulty in being independent and his need for support. (R. 320-21.) The siblings testified that all monies received by the plaintiff are promptly placed in a bank account and are utilized towards his expenses. (R. 322-23.) Further, the ALJ did not inquire into how the real estate taxes, maintenance, and upkeep of the property is addressed. Based on the figures provided for plaintiff's welfare payments (R. 322), it is unlikely that these are sufficient for all of the house requirements plus plaintiff's maintenance. More likely, the siblings, wrongly castigated by the ALJ, are financially supporting the plaintiff.

By all accounts, plaintiff did little to upkeep the home or manage his daily life. He did

not cook, clean, do any significant shopping, pay utility bills, pay property taxes, or care for his nieces or nephews. As a man who is in his thirties, his only responsibilities were to occasionally run to the market, to take out the trash, and to do small chores assigned to him by his siblings. (R. 306-07, 412.) He admitted that until a few years ago he had a problem remembering to shower. (R. 309.)

Considering this undisputed information, a conclusion that plaintiff's siblings managed his finances seems not only reasonable but compelled. There is no evidence to support the ALJ's conclusion that such management and assistance was inappropriate or represented an unfair degree of control being exerted over plaintiff by his siblings. Indeed, a medical report by Dr. Fischman, the Commissier's medical examiner, stated that if plaintiff begin receiving social security benefits, that they should be managed by his sister, meaning that plaintiff was unable to independently manage such funds. (R. 253.)

The testimony put forth by plaintiff's siblings is corroborated by plaintiff's educational records, his job history, the arrest history found on the record, and the reports and diagnoses of the medical reviewers. The only evidence that contradicts the report of the siblings is plaintiff's own testimony. In finding that the siblings were not credible the ALJ stressed that plaintiff "reported that he is capable of work and wants to work." (R. 20.) As detailed below, it was unreasonable for the ALJ to credit such statements by plaintiff, who she acknowledged in her medical findings has severe personality disorders that involve compulsive lying. "When a conflict in the evidence exists, the ALJ may choose whom to credit but 'cannot reject evidence for no reason or for the wrong reason.'" Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999) (quoting Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993)). Here, the ALJ's reliance on

plaintiff's contradictory testimony was an inappropriate reason for discounting his siblings' testimony. Thus, the Commissioner is directed to instruct the ALJ to reconsider the information provided by plaintiff's family in light of this opinion.

III. Plaintiff's credibility

The ALJ appears to have credited the plaintiff's testimony, while finding that he suffers from multiple personality disorders that render him an unreliable relator of information. The ALJ, not being a psychologist, cannot, in effect, render an expert opinion. The crediting of testimony of a person suffering from plaintiff's condition must be consistent with the expert opinion.

The ALJ found that plaintiff suffered from anti-social personality disorder, passive-aggressive personality disorder, dependent personality disorder, and situational depression. (R. 269.) The ALJ did not specify how she reached such a finding. To have reached this conclusion, the ALJ must have credited the medical history record to the extent that it included symptoms and traits of plaintiff that supported these diagnoses. The record is replete with evidence that plaintiff, because of a diagnosed medical condition, is a habitual liar and a kleptomaniac. This consistent record consists of the testimony of plaintiff's siblings, plaintiff's own admissions, his arrest history, and all medical and psychological reports of every professional who examined him. The record shows that from the time he was in grammar school plaintiff has experienced difficulty admitting wrongdoing and accepting responsibility for his errors. (R. 140.)

Despite these adopted medical findings, which include the fact that the plaintiff is prone to untruths and lying, the ALJ credited those portions of his testimony that he was capable of competitive work as a dishwasher or grocery bagger and that he wants to work. (R. 268.)

However, the ALJ does not explain why she found this testimony to be credible in light of plaintiff's impairments and history, and medical evidence to the contrary. The ALJ's determination rests on her discrediting the extensive evidence, provided by plaintiff's siblings, that plaintiff lies and steals, based upon the apparent belief that the siblings are not credible because they stood to benefit monetarily if plaintiff receives SSI benefits. As previously noted, the ALJ's outright rejection of the siblings' testimony was improper. On remand, the ALJ must also reconsider the plaintiff's credibility in light of the new findings concerning the siblings' testimony.

IV. Determination that plaintiff retains the Residual Functional Capacity to work

The ALJ's decision that plaintiff could sustain employment in a competitive work environment is not supported by substantial evidence. Because the record is filled with medical evidence that plaintiff cannot independently sustain work, and the ALJ's decision contradicts this evidence without discrediting it, her finding cannot be said to be supported by substantial evidence. See Adorno v. Shalala, 40 F.3d 43, 46 (3d Cir. 1994); see also Romani v. Commissioner of Social Security, 45 Fed. Appx. 123, 124 (3d Cir. 2002) (unpublished). A review of the medical examiners indicates that none of the doctors who examined plaintiff, including Dr. Buickians, Dr. Johnston, Dr. Fischman, and Dr. Weiss, made a finding that plaintiff was able to sustain competitive work. The only doctor who purported to render such an opinion, Dr. Rudnik, had not examined or interviewed plaintiff, and made such a finding though it was in direct contradiction to record evidence of plaintiff's medical and social history. (R. 336.) It cannot be ascertained whether the ALJ accepted or rejected Dr. Rudnik's opinion in rendering her decision.

Further, the ALJ failed to consider the actual demands of plaintiff's past work in the determining that plaintiff was capable of such performance. Third circuit precedent requires that specific findings be made as to the nature and demands of a claimant's past work. See Adorno v. Shalala, 40 F.3d 43, 46 (3d Cir. 1994); Brewster v. Heckler, 786 F.2d 581, 585 (3d Cir. 1986); see also Social Security Ruling 82-62, 1982 WL 31386, *4 (1982). Lack of such findings renders an ALJ's conclusion unsupported by substantial evidence. Adorno, 40 F.2d at 46; Brewster, 786 F.2d at 585.

While it is recognized that the ALJ is in a better position to determine the credibility of witnesses, credibility alone cannot support an ALJ decision. See Kent v. Schweiker, 710 F.2d 110, 116 (3d Cir. 1983). On remand, the Commissioner shall cause an ALJ to develop the record fully and to explain all findings in light of all medical evidence and testimony.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY ESCARDILLE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 02-2930
JO ANNE B. BARNHART,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of June, 2003, in consideration of Plaintiff's Motion for Summary Judgment, Defendant's Motion for to Summary Judgment, and the record, it is hereby ORDERED that:

1. The both Motions for Summary Judgment are DENIED;
2. This case is REMANDED in accordance with the fourth sentence of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration.

BY THE COURT:

JAMES T. GILES C.J.

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to